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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/335,127	06/17/1999	WILLIAM PATRICK COAN	113444	6119

23838 7590 09/11/2002

KENYON & KENYON  
1500 K STREET, N.W., SUITE 700  
WASHINGTON, DC 20005

EXAMINER
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LEE, JOHN J

ART UNIT	PAPER NUMBER
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2682

DATE MAILED: 09/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/335,127

Applicant(s)

COAN ET AL.

Examiner

JOHN J LEE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Applicant's arguments with respect to claims 1 – 20 have been considered but are moot in view of the new ground(s) of rejection.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1 – 8 and 15 – 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar et al. (US Patent number 6,434,367).

Regarding **claim 1**, Kumar discloses that a method for wireless communication for non-latency dependent data, the method comprising:

receiving data for transmission to a base station (Fig. 8, 9) (column 6, lines 27 – 64);

determining whether the data is appropriate for transmission over a digital control channel (column 10, lines 27 – column 12, lines 19 and Fig. 5-7); and

if the data is not appropriate for transmission over a digital control channel, transmitting the data over a SCH (supplemental channel) (column 10, lines 27 – column 12, lines 19 and column 16, lines 3 – column 17, lines 8).

Kumar does not specifically disclose the limitation “if the data is not appropriate for transmission over a digital control channel, transmitting the data over a traffic channel”. However, this would have been obvious to one having ordinary skill in the art at the time of Applicant’s invention, because the Kumar teaches that alternatively, a SCH (supplemental channel) (can be traffic channel) is used for high-rate data messaging, the signaling between the mobile and the base station can be handled by special communications channel called a DCCH (see column 2, lines 1 – 17) regarding the claimed limitation. The motivation do so would be to minimize the transmission delay in wireless communication.

Regarding **claim 2**, Kumar discloses that the determining includes determining whether the data is less than a predetermined size (column 10, lines 27 – column 12, lines 19).

Regarding **claim 3**, Kumar discloses all the limitation, as discussed in claim 1. Furthermore, Kumar further discloses that if the data is appropriate for transmission over a digital control channel, determining whether network conditions are favorable for transmission over a digital control channel (column 10, lines 27 – column 12, lines 19 and column 12, lines 21 – column 13, lines 34); and

if network conditions are favorable, transmitting the data over a digital control channel to the base station (column 10, lines 27 – column 12, lines 19 and column 12, lines 21 – column 13, lines 34).

Regarding **claim 4**, Kumar discloses all the limitation, as discussed in claims 1 and 3. Furthermore, Kumar further discloses that queuing the data for future transmission

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if network conditions are not favorable for transmitting the data (column 7, lines 54 – column 8, lines 60).

Regarding **claim 5**, Kumar discloses all the limitation, as discussed in claims 1 and 2.

Regarding **claim 6**, Kumar discloses that conditions favorable for transmission include the existence of a slot in the digital control channel into which the data can be placed for transmission (Fig. 5, 6 and column 10, lines 27 – column 12, lines 19).

Regarding **claim 7**, Kumar discloses all the limitation, as discussed in claims 3 and 4. Furthermore, Kumar further discloses that monitoring network conditions (24a in Fig. 1) for conditions favorable for transmission (column 10, lines 27 – column 12, lines 19).

Regarding **claim 8**, Kumar discloses all the limitation, as discussed in claims 3 and 6.

Regarding **claim 15** Kumar discloses all the limitation, as discussed in claims 3 and 9.

Regarding **claim 16**, Kumar discloses all the limitation, as discussed in claims 3 and 4.

Regarding **claim 17**, Kumar discloses all the limitation, as discussed in claims 3 and 5.

Regarding **claim 18**, Kumar discloses all the limitation, as discussed in claims 3 and 6.

Regarding **claim 19**, Kumar discloses all the limitation, as discussed in claims 7 and 9.

Regarding **claim 20**, Kumar discloses all the limitation, as discussed in claims 3 and 6.

4. **Claims 9 – 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar in view of Fehnel (US Patent number 6,064,889).

Regarding **claim 9**, Kumar discloses all the limitation, as discussed in claims 3 and 7. However, Kumar does not specifically disclose the limitation “a memory coupled to said processor, said memory storing instructions adapted to be executed on said processor”. However, Fehnel discloses “a memory coupled to said processor, said memory storing instructions adapted to be executed on said processor” (Fig. 5 and column 12, lines 9 – column 13, lines 49). It would have been obvious to one having ordinary skill in the art, at the time the invention was made to modify Kumar system as taught by Fehnel. The motivation do so would be to enhance the data adaptability in wireless station.

Regarding **claim 10**, Kumar discloses all the limitation, as discussed in claims 3 and 4.

Regarding **claim 11**, Kumar discloses all the limitation, as discussed in claims 3 and 5.

Regarding **claim 12**, Kumar discloses all the limitation, as discussed in claims 3 and 6.

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Regarding **claim 13**, Kumar discloses all the limitation, as discussed in claims 7 and 9.

Regarding **claim 14**, Kumar discloses all the limitation, as discussed in claims 6 and 13.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Alanara et al. (US Patent number 6,097,961) discloses Mobile Station Originated SMS Using Digital Traffic Channel.

Love (US Patent number 6,148,208) discloses Power Control Within a Broad-Band Communication System.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

Or:

(703) 308-6606 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John J. Lee** whose telephone number is (703) 306-5936.

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He can normally be reached Monday-Thursday and alternate Fridays from 8:30am-5:00 pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, **Vivian Chin**, can be reached on (703) 308-6739. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4700.

J.L.  
September 4, 2002

John J Lee

*Nguyen T. Vo*  
9/7/02

NGUYENT.VO  
PRIMARY EXAMINER